

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARCUS QUINN,

Defendant-Appellant.

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UNPUBLISHED

March 9, 2006

No. 257331

St. Joseph Circuit Court

LC No. 01-010747-FC

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of 44 to 75 years in prison imposed on his conviction of second-degree murder, MCL 750.317. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of second-degree murder on an aiding and abetting basis, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and brandishing a firearm in public, MCL 750.234e. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of 50 to 75 years for second-degree murder, six to ten years for felon in possession of a firearm, and 90 days for brandishing a firearm in public, and to a consecutive two-year term for the felony-firearm conviction. Defendant's minimum term for second-degree murder fell within the statutory sentencing guidelines.

In *People v Quinn*, unpublished opinion per curiam of the Court of Appeals, issued August 14, 2003 (Docket No. 239710), this Court affirmed defendant's convictions but remanded for resentencing on the conviction of second-degree murder. This Court determined that the trial court had erred in sentencing defendant as a third habitual offender, and that the correctly scored guidelines established a minimum term range of 22-1/2 to 46 years, 10 months for second-degree murder. *Id.*, slip op at 6.<sup>1</sup>

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<sup>1</sup> The *Quinn* Court determined that defendant should have been sentenced as a second habitual offender, MCL 769.10, and on that basis corrected his sentence for felon in possession of a firearm to five to seven and one-half years. *Id.*, slip op at 6-7. That sentence is not at issue in  
(continued...)

On remand, the trial court sentenced defendant to 46 years, 10 months to 75 years for second-degree murder. Defendant moved for resentencing, arguing that the guidelines had been incorrectly scored. The trial court agreed, and determined that the correctly scored guidelines recommended a minimum term range of 18 years, nine months to 39 years. The trial court found that the guidelines did not adequately account for the fact that defendant had aided in the perpetration of a killing in front of a large crowd of persons, including children, and did not adequately account for the danger defendant presented to society. The trial court exceeded the guidelines, sentencing defendant to 44 to 75 years for second-degree murder, with credit for 322 days served.

To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the court, and must be of considerable worth in deciding the length of the sentence. *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). To qualify as objective and verifiable, a factor must be an action or occurrence external to the mind, and must be capable of being confirmed. *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A substantial and compelling reason articulated by a trial court to merit a departure from the sentencing guidelines must justify the particular departure at issue. If the stated reasons are partially invalid and the appellate court cannot ascertain whether the trial court would have departed to the same extent regardless of the invalid factors, remand for resentencing or rearticulation is necessary. *Babcock, supra* at 258-261.

In determining whether a sufficient basis exists to depart from the sentencing guidelines, the trial court must ascertain whether the departure would result in a sentence more proportionate to the seriousness of the offense and the defendant's criminal history than would adherence to the guidelines range. In addition, in departing from the guidelines range, the trial court must determine whether the particular departure is proportionate to the circumstances of the offense and the offender. *Babcock, supra* at 262-264; *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

We review for clear error the determination of the existence of a factor warranting departing from the guidelines, de novo the determination that a factor is objective and verifiable, and for an abuse of discretion the determination that objective and verifiable factors merited departure from the guidelines range. *Babcock, supra* at 273-274. A trial court may depart from the guidelines range on the basis of an offense or offender characteristic that was already considered in calculating the guidelines range if the trial court concludes that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3)(b). An abuse of discretion exists when the sentence imposed does not fall within the range of principled outcomes. *Babcock, supra* at 269.

Defendant argues that he is entitled to another resentencing for his conviction of second-degree murder because the trial court failed to articulate substantial and compelling reasons for

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this appeal.

exceeding the guidelines. He contends that the guidelines encompass potential harm to the community , and that the trial court failed to explain why it concluded that the guidelines gave this factor inadequate weight.

As a general rule, a trial court's conclusion that a defendant poses a danger to the general public is not an objective and verifiable factor, and does not constitute a substantial and compelling reason for exceeding the guidelines. *People v Solmonson*, 261 Mich App 657, 670; 683 NW2d 761 (2004). The guidelines account for a defendant's use of a weapon and number of victims. MCL 777.31, MCL 777.32, and MCL 777.39. However, the trial court correctly found that in this case, defendant's particularly callous manner of committing the offenses, i.e., his firing a shot over the heads of numerous persons, including children, and his handing a gun to an accomplice and ordering him to shoot the victim in front of the crowd, rendered him dangerous to an extent not adequately accounted for in the guidelines. The facts on which the trial court relied were external to the court's mind, and were capable of being confirmed. *Abramski, supra* at 74. The trial court did not simply conclude in general that defendant was a danger to society; rather, the trial court based its finding on the specific circumstances surrounding the killing of the victim, and concluded that those circumstances warranted an upward departure from the guidelines. The trial court did not abuse its discretion by so concluding. *Babcock, supra* at 265-269.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Kathleen Jansen  
/s/ Jane E. Markey